# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

## SPECIAL CIVIL APPLICATION No. 19850 of 2005

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE K.M.MEHTA**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**RENUBEN W/O.SASHISING RAJENDRASING VERMA - Petitioner(s)**

**Versus**

**COMMISSIONER OF POLICE SURAT CITY & 2 - Respondent(s)**

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**Appearance :**
MS DR KACHHAVAH for Petitioner(s) : 1,MR KAMLESH KACHHAVAH for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,
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**CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA**

**Date : 18/11/2005**

**ORAL JUDGMENT**

1. Renuben W/o. Sashising Rajendrasing Verma-petitioner has filed this petition of habeas corpus

challenging the order of detention dated 16.09.2005 passed by Police Commissioner,Surat city. This petition was filed on 26.09.2005 and my learned brother Mr. Justice A.S. Dave issued **RULE** on 30th September, 2005.

2. Mr. Kamlesh Kachhavah, appeared on behalf of Ms. D.R. Kachhavah learned Advocate for the petitioner and Mr. Gohil, learned A.P.P. appeared on behalf of respondent. Learned Advocate for the petitioner invited my attention to the order of detention dated 16.09.2005 passed by Police Commissioner, Surat city and the grounds supplied by the detaining authority therein.

3. Learned Advocate for the petitioner invited my attention to solitary offence dated 10.08.2005 under Section 66(1)B, 65A,E and 81 of the Bombay Prohibition Act registered with Udhna police station, Surat city being III-C.R. No.473 of 2005. It was alleged that on the said date petitioner was arrested with 379 bottles of country liquor valued at Rs.11,370/-. On the basis of that single offence

petitioner was termed as 'Bootlegger' under Section 2(b) of the said Act. It has also been alleged that petitioner is carrying on activity of selling liquor and also indulging in anti-social activities, and therefore, she is required to be detained immediately.

4. Mr. Kachhavah, learned Advocate for the petitioner invited my attention to grounds 5 and 16 which reads as under,

> 4.1 “(5). The petitioner further submits that the allegations made in the grounds of detention, are not correct and she denies the same hereby. All the allegations made against her in the grounds of detention are vague. There is no material to show that either she or her men have ever disturbed the 'public order' either at the time of commission of the aforesaid solitary criminal case. There is no cogent or fresh credible material to show that either she or her men have ever disturbed 'public health' or 'public order' either at

the time of commission of the aforesaid criminal case. The petitioner further submits that the detaining authority has mentioned in the grounds of detention, supplied to her that the activities of the present petitioner were an obstacle to the 'public health' as well as to 'public order', but looking to the case the present criminal offence, this bald observation cannot be taken to be decisive, as to arrive at the subjective satisfaction, that the activities of the petitioners were prejudicial to the 'public health' and 'public order' and also even the tempo of general life was disturbed. The detaining authority has just mentioned the mere allegations, but they are not supported by any fresh and cogent material, hence it cannot be said to the material germane for the purpose of the arriving at the subjective satisfaction with regard to breach of 'public health' and 'public order'. The petitioner further submits that these are the instances of breach of “law and order”, that the order of

detention has been passed without application of mind.

4.2 (16). The petitioner further submits that she belongs to very poor family and her earlier husband expired in an unfortunate incident in a road accident in the year 2000. The petitioner further submits that during that period, she had four minor kids in which there are three minor daughters and one minor age of son. The petitioner further submits that then she married second time with one salesman namely Mr. Sashising Rajendrasing Verma and at present also she was pregnant about of four months. The petitioner further submits that there is nobody in her family to look after her minor kids and her husband also is having small business of bangle and glade ornaments, which he is selling by door to door in surrounding area of her residence. Therefore, under the circumstances, the petitioner prays before this Hon'ble High Court to quash and set aside the order of

detention and her matter be expedited for final hearing and to release her in the interest of justice.”

4.3 Learned Advocate for the petitioner has relied upon AIR 2003 SC 971. He has also relied on the decision of the division bench of this Court in the case of Ashok Makwana Vs. State of Gujarat (Coram: M.R. Culla,J. & R.R. Tripathi,J.).

5. Heard, Mr. Gohil, learned A.P.P. for respondent-detaining authority and he has tried to support the order of detention as well as grounds stated therein.

6. In view of the aforesaid facts and circumstances of the case, this Court is of the view that in this case only material remains is registered criminal case and on the basis of that it cannot be said that activity of the detenu has become a threat to the maintenance of 'public order' and 'public health'. The solitary offence committed by the petitioner pertains to prohibition to which I have

already made reference in my earlier part of the order. Mere involvement of petitioner in bootlegging activity may not amount to dangerous activity by detenu and mere mention of them unless supported by any material cannot be said to be material and germane for the purpose of arriving at subjective satisfaction that activity of petitioner is prejudicial to maintenance of 'public order' and 'public health'.

7. In the present case, also, there was no ground with the detaining authority, except, one criminal case registered against the petitioner at Udhna police station, Surat city to arrive at subjective satisfaction that activity of detenu is prejudicial to the maintenance of 'public order' and 'public health'. Therefore, the order of detention passed by detaining authority is contrary to law and is required to be quashed and set aside.

8. In view of the above, the order of detention dated 16.09.2005 passed by Commissioner of Police, Surat city is hereby quashed and set aside. Detenu

is, therefore, ordered to be set at liberty forthwith if he is not required in connection with any other case by the authority. Rule made absolute to the aforesaid extent with no order as to costs. D.S. permitted.

(K.M.MEHTA,J.)

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